

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States of America

v.

Case No. 2:01-cr-174-2

Darren Fuller

Date of Previous Judgment: June 18, 2002

ORDER ON MOTION FOR REDUCTION OF SENTENCE

This matter is before the court on the defendant's motion under 18 U.S.C. §3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. §994(u).

I. Court Determination of Guideline Range (Prior to Departures)

Previous Offense Level: 35 Amended Offense Level: 34
Criminal History Category: VI
Previous Guideline Range: 292 to 365 months
Amended Guideline Range: 262 to 327 months

II. Ruling on Motion

Whether to grant a reduction of sentence pursuant to §3582(c)(2) is within the discretion of the court. United States v. Ursery, 109 F.3d 1129, 1137 (6th Cir. 1997). In considering whether a reduced sentence is appropriate, this court must consider the factors in 18 U.S.C. §3553(a) to the extent that they are applicable. §3582(c)(2).

Defendant pleaded guilty to Count 1 of the indictment, which charged him with a crack cocaine conspiracy in violation of 21 U.S.C. §846. The probation officer determined that defendant was a career offender, resulting in a criminal history category VI. Ordinarily, this would have resulted in a total offense level of

34, but since the quantity of drugs attributable to the defendant as relevant conduct resulted in a higher offense level, the drug guidelines were used to determine defendant's total offense level, yielding a total offense level of 35 with a sentencing range of 292 to 365 months. This court granted the government's motion for a downward departure and sentenced defendant to a term of 188 months incarceration, which was 64% of the lowest sentence called for by the applicable guideline range after departure.

The parties agree that defendant is eligible for a reduction in sentence due to the amendment of the crack cocaine guidelines. The new guidelines would ordinarily result in a two-level reduction to a total offense level of 33, but due to the defendant's career offender status, the higher total offense level of 34 would then control. Therefore, the parties agree that a one-level reduction is authorized, resulting in a new total offense level of 34, with a sentencing range of 262 to 327 months. The parties have jointly recommended that the court reduce defendant's sentence to a term of incarceration of 168 months, which represents 64% of the lower end of the new range.

Upon consideration of the defendant's motion and the statutory sentencing factors set forth in §3553(a), the court concludes that a reduction of defendant's term of incarceration is appropriate in light of the reduction in the applicable guideline range, which reflects the Sentencing Commission's judgment that the previous ranges applicable to cocaine base offenses were too severe. The requested reduction yields a sentence that is sufficient to reflect the seriousness of the offense of conviction, to provide for just punishment, to afford adequate deterrence, and to protect the public from more crimes by the defendant. The term of incarceration of 188 months previously imposed on Count 1 of the

indictment is hereby reduced to a term of incarceration of 168 months on Count 1.

III. Sentence Relative to Amended Guideline Range

_____	The reduced sentence is within the amended guideline range.
<u> X </u>	The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
_____	Other:

Except as provided above, all other provisions of the judgment previously entered in this case shall remain in effect.

s\James L. Graham
James L. Graham
United States District Judge

Date: September 22, 2009